

By: Ashby

H.B. No. 3687

A BILL TO BE ENTITLED

AN ACT

relating to the acquisition of property by an entity with eminent domain authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 21.0111, Property Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) After making an offer to which Subsection (a) applies, the entity shall disclose to the property owner any new, amended, or updated appraisal report produced or acquired by or on behalf of the entity after making the offer and used in determining the entity's opinion of value. A disclosure required by this subsection must be made not later than the earlier of:

(1) the 10th day after the date the entity receives the appraisal report; or

(2) the third business day before the date of a special commissioner's hearing if the appraisal report is to be used at the hearing.

SECTION 2. Section 21.0113, Property Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of this section, the deed, easement, or other instrument provided under Subsection (b)(6)(B) must include:

(1) for a pipeline right-of-way easement:

(A) the maximum number of pipelines that may be installed in the right-of-way;

1 (B) the outside diameter of each pipeline to be
2 installed in the right-of-way;

3 (C) the type or category of each petroleum
4 product to be transported through the pipelines to be installed in
5 the right-of-way;

6 (D) a reasonable description of any use of the
7 surface of the right-of-way that the entity intends to acquire;

8 (E) a metes and bounds or center line description
9 of the location of the easement;

10 (F) the width of the easement;

11 (G) the depth of the pipeline and amount of
12 cover;

13 (H) a requirement to use the double-ditch method
14 for installation of the pipeline when not bore-drilled;

15 (I) a prohibition from transferring the easement
16 to any other entity, subsidiary, or company that does not have
17 eminent domain authority;

18 (J) a reservation of the property owner's right
19 to grant additional compatible easements in the easement area to
20 other parties;

21 (K) a limit on third-party access to the easement
22 area;

23 (L) a right to damages arising from construction,
24 maintenance, repair, replacement, or future removal of the pipeline
25 in the easement, including any damages to growing crops or
26 livestock;

27 (M) a covenant to lock and close all gates and

1 fences as necessary to prevent damage to or destruction of
2 livestock;

3 (N) a covenant to maintain the right-of-way; and

4 (O) a covenant to repair and restore areas used
5 or damaged outside the easement area to their original condition or
6 better;

7 (2) for an electrical transmission right-of-way
8 easement:

9 (A) the maximum number and spacing of the poles,
10 towers, or other support apparatus to carry electrical lines over
11 the easement;

12 (B) the maximum number and electrical carrying
13 capacity of the lines to be installed in the easement;

14 (C) a reasonable description of any use of the
15 surface of the right-of-way that the entity intends to acquire;

16 (D) a metes and bounds or center line description
17 of the location of the easement;

18 (E) the width of the easement;

19 (F) a reservation of the property owner's right
20 to grant additional compatible easements in the easement area to
21 other parties;

22 (G) a limit on third-party access to the easement
23 area;

24 (H) a right to damages arising from construction,
25 maintenance, repair, replacement, or future removal of lines and
26 support apparatus in the easement, including any damages to growing
27 crops or livestock;

1 (I) a covenant to lock and close all gates and
2 fences as necessary to prevent damage to or destruction of
3 livestock;

4 (J) a covenant to maintain the right-of-way; and

5 (K) a covenant to repair and restore areas used
6 or damaged outside the easement area to their original condition or
7 better;

8 (3) a prohibition against any use of the property
9 being conveyed, other than a use stated in the instrument, without
10 the express written consent of the property owner;

11 (4) a covenant that the entity will indemnify and hold
12 the property owner harmless against any claim brought against the
13 property owner arising out of or relating to the use of condemned
14 property by the entity or the entity's agents or contractors; and

15 (5) a covenant that the entity will secure and keep in
16 full force and effect at all times while the entity continues to use
17 the condemned property a policy or policies of liability insurance:

18 (A) issued by an insurer authorized to issue such
19 policies in this state;

20 (B) insuring the property owner against
21 liability for personal injuries and property damage sustained by
22 any person that arises from or is related to the use of the property
23 by the entity or the entity's agents or contractors;

24 (C) naming the property owner or the owner's
25 successor in title as an insured; and

26 (D) providing limits of liability as specified in
27 the instrument.

1 SECTION 3. Section 21.063, Property Code, is amended by
2 adding Subsections (c) and (d) to read as follows:

3 (c) As a condition of appealing the decision of a trial
4 court in a condemnation proceeding, a nongovernmental condemnor
5 shall:

6 (1) pay to the property owner the amount of just
7 compensation awarded by the trial court;

8 (2) deposit that same amount with the court subject to
9 the order of the property owner; or

10 (3) post a surety bond in the same amount issued by a
11 surety company authorized to engage in business in this state,
12 conditioned to secure the payment of the trial court's award of just
13 compensation.

14 (d) If the property owner moves to enforce Subsection (c)
15 and the nongovernmental condemnor fails to comply with that
16 subsection before the 30th day after the date the property owner's
17 motion is filed:

18 (1) the court of appeals shall dismiss the appeal with
19 prejudice and order enforcement of the final judgment;

20 (2) the nongovernmental condemnor and its assigns
21 shall lose the right to remain on the property owner's property, and
22 any interest of the nongovernmental condemnor or its assigns in the
23 property reverts to the property owner; and

24 (3) the property owner is entitled to:

25 (A) any damages attributable to the
26 nongovernmental condemnor's occupation of the property;

27 (B) all reasonable expenses incurred to

1 remediate the property; and

2 (C) all reasonable and necessary fees for
3 attorneys, appraisers, photographers, and other experts hired in
4 relation to the condemnation.

5 SECTION 4. Section 26.11(a), Tax Code, is amended to read as
6 follows:

7 (a) If the federal government, the state, or a political
8 subdivision of the state acquires the right to possession of
9 taxable property under a court order issued in condemnation
10 proceedings, assumes possession of taxable property under a
11 possession and use agreement, or a similar agreement, that is
12 entered into under threat of condemnation, or acquires title to
13 taxable property, the amount of the tax due on the property is
14 calculated by multiplying the amount of taxes imposed on the
15 property for the entire year as determined as provided by Section
16 26.09 of this code by a fraction, the denominator of which is 365
17 and the numerator of which is the number of days that elapsed prior
18 to the date of the conveyance, the effective date of the agreement,
19 or the date of the order granting the right of possession, as
20 applicable.

21 SECTION 5. (a) Sections 21.0111 and 21.0113, Property
22 Code, as amended by this Act, apply only to the acquisition of real
23 property in connection with an initial offer made under Section
24 21.0113, Property Code, on or after the effective date of this Act.
25 An acquisition of real property in connection with an initial offer
26 made under Section 21.0113, Property Code, before the effective
27 date of this Act is governed by the law applicable to the

1 acquisition immediately before the effective date of this Act, and
2 that law is continued in effect for that purpose.

3 (b) Section 21.063, Property Code, as amended by this Act,
4 applies only to an appeal commenced on or after the effective date
5 of this Act. An appeal commenced before the effective date of this
6 Act is governed by the law applicable to the appeal immediately
7 before the effective date of this Act, and that law is continued in
8 effect for that purpose.

9 (c) Section 26.11, Tax Code, as amended by this Act, applies
10 only to an agreement entered into on or after the effective date of
11 this Act. An agreement entered into before the effective date of
12 this Act is governed by the law applicable to the agreement
13 immediately before the effective date of this Act, and that law is
14 continued in effect for that purpose.

15 SECTION 6. This Act takes effect September 1, 2017.